

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

RICHARD WEST and JOSEPH
BRUYETTE, individually and on behalf
of a class of similarly situated persons
Plaintiffs,

v.

MICHAEL SMITH, Vermont Secretary of Human
Services;
The Vermont Deputy Secretary of Human
Services;
JAMES BAKER, Vermont Department of
Corrections Commissioner; and
The Vermont Department of Corrections Health
Services Director, in their official capacities,
and
CENTURION OF VERMONT, LLC,
Defendants.

Civil Action No. 2:19-cv-81

**SUPPLEMENT TO
DEFENDANTS' JOINT MOTION TO STAY (PAPER 61)**

NOW COME Defendants to supplement their Joint Motion to Stay, filed on April 10, 2020
as Paper 61.

One factor in deciding to grant or deny a Motion to Stay pursuant to F.R.Civ.P. 23(f) is, “[E]ither (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships tipping decidedly toward the party seeking injunctive relief.”

Friends of the Earth v. U.S. Forest Service, 95 F.Supp.2d 206, 207–08 (D.Vt., 2000).

The Defendants' Joint to Motion to Stay stated on page 3:

Given that the reasons for staying the class action are so closely related to the reasons for the appeal of the Court's certification of the class, it serves no purpose to repeat those arguments and the supporting record here. Defendants adopt the reasons for the appeal stated in their petition to the Circuit Court, which will be filed in the Circuit Court on Monday, April 13, 2020, and will be submitted as a supplement to this Motion for Stay.

As set out in the Motion to Stay, the balance of hardships favors a stay pending appeal. Today, April 13, 2020, Defendants have filed jointly their Rule 23(F) Petition for Permission to Appeal in the United States Court of Appeals for the Second Circuit. For the reasons enumerated in their Petition, Defendants respectfully state that there is a reasonable likelihood of success in obtaining Circuit Court review of this Court's certification of a class action and that there are serious questions regarding the merits of class certification.

WHEREFORE Defendants hereby submit their Rule 23(F) Petition for Permission to Appeal in the United States Court of Appeals for the Second Circuit, attached as Exhibit 1, in support of their Joint Motion to Stay.

DATED: April 13, 2020.

<p>CENTURION OF VERMONT, LLC</p> <p>BY: <u>/s/ Stephen J. Soule</u> Stephen J. Soule, Esq.</p> <p>BY: <u>/s/ Pamela L.P. Eaton</u> Pamela L.P. Eaton</p> <p>PAUL FRANK + COLLINS P.C. PO Box 1307 Burlington, VT 05402-1307 802.658.2311 ssoule@pfclaw.com peaton@pfclaw.com</p> <p><i>PRO HAC VICE ATTORNEYS</i> Michael Bentley, Esq. Molly Walker, Esq. Bradley Arant Boult Cummings LLP One Jackson Place, 188 E. Capitol Street, Suite 100 Jackson, MS 39201 601.592.9935 mbentley@bradley.com mmwalker@bradley.com</p>	<p>THOMAS J. DONOVAN, JR. ATTORNEY GENERAL</p> <p>BY: <u>/s/ Jared C. Bianchi</u> Jared C. Bianchi, Assistant Attorney General Robert LaRose, Senior Assistant Attorney General 280 State Drive, HC2N Waterbury, VT 05671-2080 (802) 241-0194 jared.bianchi@vermont.gov Robert.LaRose@vermont.gov</p> <p>Attorneys for Defendants Secretary Mike Smith Commissioner James Baker</p>
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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2020, I electronically filed the *SUPPLEMENT TO DEFENDANTS' JOINT MOTION TO STAY (PAPER 61)* with the Clerk of the Court using the CM/ECF system:

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DATED at Burlington, Vermont, this 13th day of April 2020.

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